

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TONY D. RILEY,

Plaintiffs,

5:19-cv-01451 (BKS/ATB)

v.

STACI DENNIS TAYLOR, ONONDAGA COUNTY
SEX OFFENDER OFFICE and ROBERT EARL,

Defendants.

Appearances:

Plaintiff pro se

Tony D. Riley

99000501

Onondaga County Justice Center

555 South State Street

Syracuse, NY 13202

Hon. Brenda K. Sannes, United States District Judge:

DECISION AND ORDER

Plaintiff Tony Riley commenced this action on November 22, 2019, and sought leave to proceed *in forma pauperis* (“IFP”). (Dkt. Nos. 1, 3 and 5). This matter was referred to United States Magistrate Judge Andrew T. Baxter who, on December 13, 2019, granted Plaintiff’s application to proceed IFP for purposes of filing only and issued a Report-Recommendation, recommending that Plaintiff’s Amended Complaint be dismissed with prejudice against Defendants Onondaga County Sex Offender Office and Staci Dennis Taylor; dismissed without prejudice against Defendant Robert Earl for lack of subject matter jurisdiction; and, as to the remainder, dismissed without prejudice and without leave to amend. (Dkt. No. 6). The Report-Recommendation stated that Plaintiff had fourteen days within which to file written objections to

the report under 28 U.S.C. § 636(b)(1), and that the failure to object to the report within fourteen days would preclude appellate review. (*Id.* at 15).

The Report-Recommendation was sent to Plaintiff's last known address, as well as an address that he had included on his Amended Complaint, but the mail was returned to the Court stamped "Not Here/Return to Sender," and "Not Known Unable to Forward." (Dkt. No. 8, 9). On January 24, 2020, the Court issued an Order granting Plaintiff an additional fourteen days to notify the Court of his current address and file any objections to the Report-Recommendation. (Dkt. No. 10). That Order was also returned to the Court marked "Not Here/Return to Sender." (Dkt. No. 11). Plaintiff has failed to respond to the January 24, 2020 Order or submit objections to the Report-Recommendation.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

Accordingly, it is

ORDERED that the Amended Complaint (Dkt. No. 5) is **DISMISSED** **it its entirety** **with prejudice** as against Defendant Onondaga County Sex Offender Office under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim; and it is further

ORDERED that the Clerk is directed to add Defendant Robert Earl to the docket; and it is further

ORDERED that the Amended Complaint is **DISMISSED in its entirety without prejudice** as against Defendant Robert Earl based on lack of subject matter jurisdiction; and it is further

ORDERED the Amended Complaint is **DISMISSED with prejudice** as against Defendant Staci Dennis Taylor to the extent she was acting in her prosecutorial capacity based upon absolute immunity under 28 U.S.C. § 1915(e)(2)(B)(iii); and it is further

ORDERED that the remainder of the Amended Complaint is **DISMISSED in its entirety without prejudice**, based upon 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim, but without opportunity to amend at this time; and it is further

ORDERED that the Clerk of the Court serve a copy of this Decision and Order on Plaintiff.

IT IS SO ORDERED.

Dated: February 24, 2020
Syracuse, New York


Brenda K. Sannes
U.S. District Judge